SUPREME COURT, U. S.

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-408

UNITED STATES OF AMERICA,
Petitioner,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, ET AL.

BRIEF OF RESPONDENT LURA VIRGINIA BICKEL LEE CARTER IN OPPOSITION TO PETITION BY UNITED STATES OF AMERICA FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Opinion Below 1
Jurisdiction 1
Question Presented 2
Argument 2
Conclusion 3

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OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit (Appendix A to the Petition) is now reported at 446 F.2d 136.

JURISDICTION

The petition adequately treats the jurisdictional prerequisites.

QUESTION PRESENTED

As stated by the petition of the United States of America:

> WHETHER THE FEDERAL TAX LIEN ACT OF 1966 CHANGED THE FEDERAL LAW GOVERNING THE PRIORITY OF NON-TAX FEDERAL LIENS.

As stated by the petitioner The Connecticut Mutual Life Insurance Company (Connecticut Mutual):

> WHETHER THE "CHOATE LIEN" DOCTRINE DEVELOPED BY THIS COURT IN FEDERAL TAX LIEN CASES SHOULD BE EXTENDED TO A PRIVATE FIRST MORTGAGE LIEN COMPETING WITH A SECOND MORTGAGE LIEN OF THE UNITED STATES.

ARGUMENT

In the interest of brevity we adopt by reference the Statement of the Case in the Petition for Certiorari of this respondent in No. 71-166, denied October 12, 1971. The facts there set forth demonstrate (1) the issue sought to be raised by the present petition is moot, and (2) the United States cannot with consistency argue both that its present petition presents a viable issue and also that the sale which this respondent unsuccessfully sought to overturn in No. 71-166 was properly confirmed.

This respondent has no stake in the order of the priorities of the claims against her, only in the total amount of the claims. However, it is manifest that when the

United States voluntarily exercised its right of redemption and paid to Connecticut Mutual a sum based on the bid of Connecticut Mutual at the sale plus interest (a figure similar to but *not* equivalent to the total of the mortgage lien of Connecticut Mutual, interest and attorneys' fees), and then claimed to be vested with all rights of Connecticut Mutual against this respondent, the issue of priorities became moot. If it is not moot, a fair question (now unfortunately rhetorically) must inquire as to the means by which the United States can reconcile its two positions.

CONCLUSION

The petition raises a question which the United States had already rendered moot.

Respectfully submitted,

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